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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/772,881
Filing Date: February 05, 2004
Appellant(s): UTHE, ROBERT THOMAS

Robert Uthe
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 13, 2009 appealing from the Office action mailed August 18, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US Publication 2002/0144147 Oct 02, 2002

5,367,670 Ward 11-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Application Publication 2002/0144147 to Basson et al (Basson hereinafter) in view of US Patent No. 5,367,670 to Ward et al. (Ward herein after).

Regarding claim 10, Basson teaches **associating a priority indication with at least some physical resources in a computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222)**; identifying the physical resources associated with the plurality of alert conditions** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360)**; and selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources** (Basson, pg. 2, par. 16; fig. 4, 420, 495)**.** Basson does not explicitly disclose **determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the**

identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a number of queued alert conditions for the resource management system satisfies a threshold number. Ward teaches **determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.)**; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a number of queued alert conditions for the resource management system satisfies a threshold number**(Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates. Ward explicitly discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of

voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates. These monitored metrics are either actual numbers or are represented by numbers. As such, the monitored metrics clearly constitute a threshold number.).

3. Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

4. Regarding claim 11, Basson teaches **associating a priority indication with at least some physical resources in a computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222)**; identifying the physical resources associated with the plurality of alert conditions** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360)**; and selecting an alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources** (Basson, pg. 2, par. 16; fig. 4, 420, 495)**.** Basson does not explicitly disclose **determining when a threshold metric associated with at least some of the plurality of alert conditions**

has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time. Ward teaches **determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.)**; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a waiting time for alert conditions to be handled by the resource management system satisfies a threshold time** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at

which the system manager operates. Ward explicitly discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates. These monitored metrics are either actual numbers or are represented by numbers. As such, the monitored metrics clearly constitute a threshold number. Ward further discloses time based alerts (col. 10, lines 52-67). These correspond to a threshold time.).

5. Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

6. Regarding claim 12, Basson teaches **associating a priority indication with at least some physical resources in a computer system** (Basson, fig. 1, 130, 133, 137; fig. 2, 221,222)**; identifying the physical resources associated with the plurality of alert conditions** (Basson, pg. 2, par. 16, 20 *Prioritizer 143 marks these outgoing pieces of network information with a particular label. This label alerts other network resources that the network information should be prioritized*; fig. 3, 310, 340, 360)**; and selecting an alert condition from among the plurality of alert conditions based on the**

priority indication associated with the identified physical resources (Basson, pg. 2, par. 16; fig. 4, 420, 495). Basson does not explicitly disclose **determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a threshold rate of alert conditions are received for the resource management system.** Ward teaches **determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied, wherein the selecting an the alert condition from among the plurality of alert conditions based on the priority indication associated with the identified physical resources is carried out responsive to the determination that the threshold metric has been satisfied** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates.)**; wherein determining when a threshold metric associated with at least some of the plurality of alert conditions has been satisfied comprises determining when a threshold rate of alert conditions are received for the resource management system** (Ward, col. 2, lines 62-66; Ward discloses in alternate aspects of

this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates. Ward explicitly discloses in alternate aspects of this embodiment of the invention, the monitored information transfers may be the level of voltage, i.e. monitored metric supplied to the system manager or the temperature, i.e. monitored metric at which the system manager operates. These monitored metrics are either actual numbers or are represented by numbers. As such, the monitored metrics clearly constitute a threshold number. Ward also discloses a system manager that determines alerts the digital power level signal (col. 6, lines 13-30), i.e. rate of the power level signal, or the digital temperature level (col. 6, lines 46-58), i.e. rate of the temperature level. These are interpreted to be meet the limitation of a threshold rate.).

7. Basson and Ward are analogous art because they are from the same field of endeavor of network communication. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Ward's computer system manager for monitoring events and operating parameters and generating alerts with Basson's prioritization of networks for preferred groups. The suggestion/motivation would have been to improve the performance of the network management system and provide greater management capability improving the response time to failure alerts allowing corrective action to be performed (Ward, col. 2, lines 11-35).

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses replies individually.

As per appellant's argument that:

(1) Regarding the rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Basson in view of Ward, appellant argues that Ward fails to teach or suggest a number of queued alert conditions for the claimed resource management system satisfying a threshold number.

In reply to argument (1), examiner asserts Ward clearly teaches the monitoring of a threshold value associated with object attributes (Ward col. 5, lines 28-36; "Each system component being monitored may be referred to as an object having a number of attributes. As the components continue to be monitored, the value of the object's attributes may change, for example, by incrementing, decrementing, updating, resetting or modifying. When the attributes exceed their boundary or threshold value, an alert will be generated."). Furthermore, Ward teaches each of these objects being stored in an object space (Ward, col. 3, lines 1-9; " an object space for storing objects related to the passively monitored signals and providing information related to operating conditions within the system."). If the objects and associated attributes reach a value greater than this threshold value, an alert is generated. This threshold value clearly maps to the claimed threshold number.

(2) Regarding the rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Basson in view of Ward, appellant argues that Ward fails to teach or suggest a waiting time for alert conditions to be handled by the claimed resource management system satisfying a threshold time.

In reply to argument (2), examiner asserts Ward clearly teaches the monitoring of a threshold value associated with object attributes (Ward col. 5, lines 28-36) as stated in argument 1. Furthermore Ward discloses times associated with alerts as a function of the control processor (Ward, col. 10, lines 63-67; "...dates, numbers, alert conditions, names, voltages which correspond to the information useful to identify the type, severity, time of, location, or other identifying information regarding alert conditions"). These correspond to a threshold time. Furthermore to provide the alert generating system of Ward having a threshold number with a threshold number that is a time would have been obvious to one of ordinary skill in the art, in view of this citation from Ward, since all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art at the time of the invention, i.e. one of ordinary skill in the art would have recognized that the threshold value of Ward could also represent a time associated with the generation of alert conditions.

(3) Regarding the rejection of claim 12 under 35 U.S.C. 103(a) as being unpatentable over Basson in view of Ward, appellant argues that Ward fails to teach or

suggest a threshold rate of alert conditions for the claimed resource management system being reached.

In reply to argument (3), examiner asserts Ward clearly teaches the monitoring of a threshold value associated with object attributes (Ward, col. 3, lines 1-9, col. 5, lines 28-36) as stated above in argument 1. The monitoring of this threshold value versus the actual real-time value of the object attribute is a threshold rate. When the actual value of object attribute approaches the pre-defined threshold value, an alert is generated.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tariq S. Najee-ullah

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